

CHAPTER 6. LEAVES, HOURS OF WORK AND EMPLOYEE DEVELOPMENT

SUBCHAPTER 1. LEAVES OF ABSENCE

- 4A:6-1.1. General provisions
- 4A:6-1.2. Vacation leave
- 4A:6-1.3. Sick leave
- 4A:6-1.4. Sick leave procedures: State service
- 4A:6-1.5. Vacation, administrative and sick leave adjustments: State service
- 4A:6-1.6. Sick Leave Injury (SLI) requirements: State service
- 4A:6-1.7. Sick Leave Injury (SLI) reporting and appeal procedures: State service
- 4A:6-1.8. Pregnancy-disability and child care leave: State service
- 4A:6-1.9. Administrative leave: State service
- 4A:6-1.10. Leave without pay: State service
- 4A:6-1.11. Military leave
- 4A:6-1.12. Leave for appointment by Governor
- 4A:6-1.13. Convention leave
- 4A:6-1.14. Education leave: State service
- 4A:6-1.15. Leave for athletic competition: State service
- 4A:6-1.16. Leave for union office
- 4A:6-1.17. Leave for elective office: local service
- 4A:6-1.18. Leave for emergency civilian duty: State service
- 4A:6-1.19. Leave for jury duty: State service
- 4A:6-1.20. Leave to appear as a witness: State service
- 4A:6-1.21. Family leave
- 4A:6-1.21A. State family leave
- 4A:6-1.21B. Federal family and medical leave
- 4A:6-1.22. Donated leave program
- 4A:6-1.23. Voluntary furlough program
- 4A:6-1.24. School volunteer leave

4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.12); convention leave (N.J.A.C. 4A:6-1.13); elective office leave (N.J.A.C. 4A:6-1.17); family leave under State law (N.J.A.C. 4A:6-1.21A); and Federal family and medical leave (N.J.A.C. 4A:6-1.21B).

2. An appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one

year for exceptional circumstances upon request of the appointing authority and written approval of the Department of Personnel.

3. An appointing authority may grant unpaid union leave pursuant to N.J.A.C. 4A:6-1.16.

4. Vacation and sick leaves for police officers and firefighters are established by local ordinance. See N.J.S.A. 40A:14-7 and 40A:14-118.

(b) In State service, this subchapter shall apply to career service employees, unless otherwise indicated. Temporary employees (see N.J.S.A. 11A:4-13c.) are not entitled to the leaves or benefits in this subchapter.

(c) Records of all employee leaves of absence and types of leave shall be maintained by State and local appointing authorities and reported to the Department of Personnel for the official State record in the prescribed manner and form.

(d) A leave of absence shall not disqualify an applicant for a promotional examination.

(e) Where leave procedures are not set by this subchapter, appointing authorities shall establish such procedures subject to applicable negotiations requirements.

4A:6-1.2 Vacation leave

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See (c) below for definition of continuous service.

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:

i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;

ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;

iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;

iv. Over 20 years of continuous service, 25 working days.

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.

4. Vacation leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(b) From initial employment up to the end of the first calendar year, annual paid vacation leave for full-time local employees shall be at least the amounts specified in (a)1 and (a)2 above. Thereafter their vacation leave shall be at least:

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;

2. After 10 years of service and up to 20 years of continuous service, 15 working days; and

3. After 20 years of continuous service, 20 working days.

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of N.J.A.C. 4A:4-7.1A are met, employment for different jurisdictions (except in the case of the intergovernmental transfer of a police officer and firefighter), without actual interruption due to resignation, retirement or removal.

1. An employee who has been appointed from a special reemployment list shall be credited with any continuous service prior to the layoff in addition to continuous service subsequent to reemployment.

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave and voluntary furlough, shall not be included in calculating years of continuous service.

3. An unclassified State employee, who is reappointed following a layoff under the provisions of a collective negotiations agreement, shall be credited with service prior to the layoff and shall continue to accrue service upon reappointment.

(d) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. See N.J.A.C. 4A:3-3.8(e) for paid vacation leave to which State employees in intermittent titles are entitled.

(e) In State service, vacation leave may be granted and shall be recorded and tracked in hours.

(f) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.

(g) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused earned vacation leave, even if the employee has received an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A.

(h) An employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year. See N.J.A.C. 4A:6-1.5(b)2 for State service.

(i) Upon the death of an employee, unused vacation leave shall be paid to the employee's estate.

(j) See N.J.A.C. 4A:6-1.22 for the donated leave program.

4A:6-1.3 Sick leave

(a) Full-time State employees shall be entitled to annual paid sick leave as set forth in (a)1 and 2 below. Full-time local employees shall be entitled to a minimum of annual paid sick leave as follows:

1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days.

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. See N.J.A.C. 4A:3-3.8(e) for paid sick leave to which State employees in intermittent titles are entitled.

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension but shall continue to accrue during a voluntary furlough or furlough extension leave.

(d) Sick leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(e) An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

(f) Unused sick leave shall accumulate from year to year without limit, whether or not it was accrued prior to an intergovernmental transfer in accordance with N.J.A.C. 4A:4-7.1A, except that the sick leave of a police officer or a firefighter who receives an intergovernmental transfer shall accrue from the effective date of the transfer.

(g) Sick leave may be used by employees who are unable to work because of:

1. Personal illness or injury (see N.J.A.C. 4A:6-21B for Federal family and medical leave);

2. Exposure to contagious disease (See N.J.A.C. 4A:6-1.21B for Federal family and medical leave);

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (See N.J.A.C. 4A:1-1.3 for definition of immediate family, See N.J.A.C. 4A:6-1.21A for family leave under State law and See N.J.A.C. 4A:6-1.21B for Federal family and medical leave); or

4. Death in the employee's immediate family, for a reasonable period of time.

(h) Sick leave may be used by an employee with a disability for absences related to the acquisition or use of an aid for the disability when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

(i) See N.J.A.C. 4A:6-1.22 for the donated leave program.

4A:6-1.4 Sick leave procedures: State service

(a) The provisions in this section are applicable to State service.

(b) An employee whose work schedule is other than a 24-hour or shift coverage shall, by the scheduled reporting time, notify a contact person designated by the agency of any absence due to illness.

(c) An employee whose work unit requires 24-hour or shift coverage shall, at least one hour before the scheduled starting time, notify the designated contact person of any absence due to illness. In case of sudden illness or emergency, exceptions may be granted by the designated contact person.

(d) An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period.

(e) When an illness is of a chronic or recurring nature causing occasional absences of one day or less, one proof of illness shall be required for every six month period. The proof of illness must specify the nature of the illness and that it is likely to cause periodic absences from employment.

(f) In case of sick leave due to exposure to a contagious disease, a death in the employee's immediate family or to care for a seriously ill member of the employee's immediate family, reasonable proof may be required.

(g) An appointing authority may require an employee to be examined by a physician designated and compensated by the appointing authority as a condition of the employee's continuation of sick leave or return to work.

1. Such an examination shall establish whether the employee is capable of performing his or her work duties and whether return to employment would jeopardize the health of the employee or that of other employees.

2. The appointing authority shall set the date of the examination to assure that it does not cause undue delay in the employee's return to work.

(h) Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action.

(i) An appointing authority shall provide the Department of Personnel with a record of an employee's unused sick leave when the employee separates from State service. The Department of Personnel shall provide an appointing authority with a record of an employee's unused sick leave if an employee is reemployed. Upon reemployment,

an employee is entitled to utilize any unused sick leave from the previous period of employment. Such unused leave carried over shall be used before any leave accrued after reemployment. However, such unused leave carried over shall not be counted for purposes of Supplemental Compensation on Retirement. See N.J.A.C. 4A:6-3.2.

(j) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority representatives in connection with inquiries into the ability of an employee to perform job-related functions;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.5 Vacation, administrative and sick leave adjustments: State service

(a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.

2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

(c) In State service, intermittent days off without pay other than voluntary furlough or furlough extension days shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay other than voluntary furlough or furlough extension days equal 11 working days, the employee's vacation and sick leave credit shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d) An employee shall not be reimbursed for accumulated sick leave when leaving State service except for separations on retirement as provided in N.J.A.C. 4A:6-3.

(e) When an employee is transferred in State service, the employee's former appointing authority shall provide the new State appointing authority with a record of an employee's unused vacation, administrative and sick leave.

(f) In State service, when an employee's workweek changes, the employee's vacation, administrative and sick leave entitlements shall be recalculated in the following manner:

1. The number of hours of vacation, administrative and sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and

2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

EXAMPLE: Mary Smith is in a 35 hour workweek title. On January 1 of the current year, she had accumulated 245 sick leave hours from prior years and was credited with 105 sick leave hours for the current year (15 days x 7 hours), or a total of 350 sick leave hours. Effective May 1, she is appointed to a title with a 40 hour workweek. Her new sick leave entitlement is computed by dividing 350 by seven, the number of hours in a 35 hour workweek workday, to yield the result of 50 days of sick leave. The 50 days are then multiplied by eight, the number of hours in a 40 hour workweek workday. Thus, Mary Smith's converted sick leave hours are 400.

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for the current year (15 days x 8 hours), or a total of 350 sick leave hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 ($43.75 \times 7 = 306.25$, rounded to 306).

(g) In State service, an employee whose status changes from part time to full time, or from full time to part time, shall receive sick leave benefits as follows:

1. If an employee's status changes from part time to full time, the amount of proportional sick leave which the employee has earned as a part time employee is added to the amount of sick leave with which he or she is credited for the remainder of the year as a full time employee.

2. If an employee's status changes from full time to part time, the amount of sick leave which he or she has earned as a full time employee is added to the amount of proportional sick leave with which the employee is credited for the remainder of the year as a part time employee.

EXAMPLE: John Jones works two days a week. Therefore, he is employed for 40 percent of the workweek. As a part time, 40 percent employee, his yearly sick leave is calculated by taking 40 percent of 15 sick leave days; thus, John is credited with six sick leave days on January 1. On pay period 14, John becomes a full time employee. As of that time, he already has earned three sick leave days as a part time, 40 percent employee. As a full time employee for the remainder of the year, John is credited with 7.5 sick days. These are added to the three sick leave days which he earned during the first half of the year, so that he will have a total of 10.5 sick days for the year. Any accumulated sick days which John earned in previous years as a part time, 40 percent employee are added to the 10.5 sick days to which John will be entitled this year.

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

(a) The provisions concerning sick leave injury (SLI) benefits in this subchapter apply to full and part-time State employees in the career, senior executive and unclassified services. SLI benefits for employees in intermittent titles will be based on the expected length of service.

(b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1. An employee who can return to work on a part-time basis shall be compensated for the hours actually worked and receive SLI benefits for the hours missed due to the disability.

2. SLI benefits shall be reduced by the amount of any temporary disability payments under N.J.S.A. 34:15-12 (Workers' Compensation) or N.J.S.A. 43:21-25 et seq. (Temporary Disability Benefits Law).

3. Benefits are limited to a period beginning on the initial date of the injury or illness and ending one year from that date.

i. Benefits shall not be paid for any absence from work occurring more than one year from the initial date of the injury or illness, even if the aggregate period of disability does not exceed one year.

ii. In cases of disorders as set forth in (c)4 below, the one year period shall begin with the first date of disability from work.

4. An employee receiving SLI benefits may also be entitled to medical leave under Federal law. See N.J.A.C. 4A:6-1.21B.

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or condition of employment are compensable.

2. Preexisting illnesses, diseases and conditions aggravated by a work-related accident or condition of employment are not compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or condition of employment, are not compensable except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

5. Psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation.

6. An injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent, including those injuries or illnesses arising from impairment due to alcohol or drug abuse.

(d) Any accident resulting in injury for which the employee seeks compensation must occur on the work premises.

1. Work premises are the physical area of operation of the appointing authority, including buildings, grounds and parking facilities provided by the State.

2. An injury occurring off the work premises is compensable only when the employee is engaged in authorized work activity or travel between work stations.

(e) For the injury to be compensable, it must occur during normal work hours or approved overtime.

1. Injuries which occur during normal commutation between home and the work station or home and a field assignment are not compensable.

2. Injuries which occur during lunch or break periods are not compensable. However, employees who are required by the appointing authority to remain at a particular job location during lunch and/or work-break shall not be precluded from receiving SLI benefits.

4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service

(a) An employee is required to report to his or her supervisor any work accident or condition claimed to have caused disability upon occurrence or discovery, and is responsible for completing a written report on the matter within five days or as soon as possible thereafter. The report shall include a statement of when, where and how the injury or illness occurred, statements of witnesses and copies of all medical reports concerning the injury or illness.

(b) The appointing authority shall review the request for SLI benefits based on the standards in N.J.A.C. 4A:6-1.6, and within 20 days of receipt of the request:

1. Grant the request, notify the employee in writing and forward its recommendation to the Department of Personnel which, upon review, shall notify the employee and appointing authority whether or not the benefits have been approved; or

2. Deny the request and advise the employee in writing of the reasons for the denial and of the right to appeal to the Merit System Board within 20 days of receipt of the determination.

(c) The appointing authority's recommendation for approval of SLI benefits must be accompanied by:

1. All personal injury reports;
2. A record of the employee's lost time;
3. A detailed explanation of the incident;
4. All pertinent physician reports; and

5. A completed "Request for Employment Disability Leave."

(d) The appointing authority may require the employee to be examined by a physician designated and compensated by the appointing authority.

(e) An employee may appeal an appointing authority denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

(f) An employee or appointing authority may appeal a Department of Personnel denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

(g) In all appeals, copies of all materials submitted to the Merit System Board shall be provided to all other parties.

(h) The burden of proof is on the appellant to establish entitlement to SLI benefits by a preponderance of the evidence.

(i) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

1. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the eligibility of the employee for benefits under this section;

2. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

3. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

4. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request.

4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be

granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy. For medical leave under Federal law, See N.J.A.C. 4A:6-1.21B.

1. An employee may use accrued sick, vacation or administrative leave for pregnancy-disability purposes but shall not be required to exhaust accrued leave before taking a leave without pay.

2. An employee must exhaust all accrued sick leave to be eligible for New Jersey Temporary Disability Insurance.

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10. For family leave under State law, See N.J.A.C. 4A:6-1.21A. For Federal family and medical leave, See N.J.A.C. 4A:6-1.21B.

4A:6-1.9 Administrative leave: State service

(a) Full-time State employees in the career and senior executive service and those employees of Rutgers, the State University, New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

1. Priority in granting such leave requests shall be:

- i. Emergencies;

- ii. Religious holidays;

- iii. Personal matters.

2. Employees hired during the calendar year shall be granted one-half day of administrative leave for each full calendar month of employment up to a maximum of three days' leave for the remainder of the calendar year. Thereafter, administrative leave shall be credited at the beginning of each calendar year.

3. Administrative leave may be granted and shall be recorded and tracked in hours. See N.J.A.C. 4A:6-1.5(f) for adjustments in the administrative leave entitlement when an employee's workweek changes.

(b) Unclassified employees may be granted up to three days of administrative leave in each calendar year, at the discretion of the appointing authority.

(c) Part-time employees shall be entitled to a proportionate amount of paid administrative leave. See N.J.A.C. 4A:3-3.8(e) for paid administrative leave to which employees in intermittent titles are entitled.

(d) Use of administrative leave must be approved by the appointing authority and cannot be unreasonably denied.

(e) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall not be required to reimburse the State for days already used.

1. An employee leaving State service due to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A shall not receive compensation based on any unused administrative leave, nor shall the administrative leave be transferrable.

(f) Administrative leave may be taken in conjunction with other types of paid leave.

4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Department of Personnel.

1. An appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Such leaves may be extended up to an additional six months, upon request of the appointing authority and written approval by the Department of Personnel, in cases of personal illness or disability. Leave without pay for nonpermanent employees may be terminated at any time.

2. Leave for union office for permanent and nonpermanent employees, pursuant to N.J.A.C. 4A:6-1.16, may be for periods longer than those specified in (a) and (a)1 above, as provided in the negotiated agreement.

(b) Employees in the senior executive and unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority.

(c) An appointing authority may permit an employee to return from a leave of absence without pay prior to its conclusion.

(d) Appointing authorities shall set procedures subject to review by the Department of Personnel for leave without pay.

(e) For family leave under State law, See N.J.A.C. 4A:6-1.21A. For Federal family and medical leave, See N.J.A.C. 4A:6-1.21B.

4A:6-1.11 Military leave

(a) An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters the military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 43 U.S.C. Section 2021.

(b) An employee in the career, senior executive or unclassified service who is a member of the national guard or other component of the organized militia of the State of New Jersey shall be entitled to a leave of absence with pay not to exceed 90 days in the aggregate in any one year that he or she is required to engage in active duty or active duty for training. See N.J.A.C. 5A:2-2.1(d) for types of required duty. However, appointing authorities may reschedule an employee's work time to avoid conflict with such required duty.

1. A leave of absence with pay shall also be granted for other military duty when ordered by the Governor in case of insurrection, breach of the peace, national disaster or imminent danger to public safety.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38A:4-4.

(c) A permanent employee who is a member of the organized reserves of the Army, Navy, Air Force or Marine Corps of the United States or other affiliated organizations shall be entitled to a leave of absence with pay on days on which he or she is required to engage in field training, but only that training which consists of participation in unit training field operations and is a part of the required annual tour of duty in order to be a member of that component. However, appointing authorities may reschedule an employee's work time to avoid conflict with military field training.

1. A nonpermanent employee serving for one year or longer shall be entitled to a leave of absence with pay not to exceed 30 days in the aggregate in any one year while engaged in field training. A leave of absence without pay shall be granted to a nonpermanent employee serving for less than a year while engaged in field training.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38:23-1 and 38:23-1.1.

(d) An employee is entitled to a leave of absence without pay for such other national guard, state organized militia or United States reserve duty not covered by (b) or (c) above.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(e) For military leave regulations promulgated by the New Jersey Department of Defense, see N.J.A.C. 5A:2.

4A:6-1.12 Leave for appointment by Governor

When a permanent employee or an employee in the senior executive service is appointed by the Governor to an office, the appointing authority shall grant and record a leave of absence without pay for the period of appointment, provided that the employee requests such a leave of absence prior to the appointment. Upon the expiration of the leave, the employee shall have the right to return to the former title and receive all the rights, privileges and benefits of that title as if he or she had remained in that title. See N.J.S.A. 52:14-16.2.

4A:6-1.13 Convention leave

(a) Every employee in the career, senior executive or unclassified service who is a duly authorized representative shall, upon request, be granted a leave of absence with pay for a period of up to five days in any calendar year to attend any State or national convention of any one or more of the organizations listed in N.J.S.A. 38:23-2. The five days shall include necessary travel time. Written notice from the appropriate organization indicating that the employee is a duly authorized delegate shall be submitted to the appointing authority prior to the convention. A certificate of attendance shall be submitted to the appointing authority after the convention indicating the delegate's attendance.

(b) An employee who is a duly authorized representative of the New Jersey Policemen's Benevolent Association, Inc.; the Fraternal Order of Police; the Firemen's Mutual Benevolent Association, Inc.; or the Professional Fire Fighters Association of New Jersey shall be granted a leave of absence with pay to attend a State or national convention of one or more of those organizations; provided, however, that:

1. No more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, unless more than 10 authorized representatives are permitted such leave pursuant to an agreement between the appointing authority and negotiations representatives.

2. For employee organizations as with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave.

(c) The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention, except that such leave shall be for no more than seven days. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending. See N.J.S.A. 11A:6-10 and 40A:14-177.

(d) Persons designated by the Governor shall be granted leaves of absence to attend the convention of the American Correctional Association (American Prison Association). See N.J.S.A. 30:4-178.

(e) Any full-time teaching staff member, secretary or office clerk of any local school district who applies to his or her board of education shall be granted a leave of absence with pay to attend the convention of the New Jersey Education Association. Such leave shall not exceed two days within any one calendar year. The employee must file a certificate of attendance with the board of education. The certificate must be signed by the executive secretary of the association for the employee to receive paid leave. See N.J.S.A. 18A:31-2.

4A:6-1.14 Education leave: State service

In State service, an appointing authority may, with Department of Personnel approval, grant an employee in the career, senior executive or unclassified service education leave with or without pay for the purpose of obtaining training that is of direct value to the State but is not available through State inservice training programs. See N.J.A.C. 4A:6-4.6 for tuition aid programs.

4A:6-1.15 Leave for athletic competition: State service

(a) Any State employee in the career, senior executive or unclassified service who qualifies as a member of the United States team for athletic competition at the world, Pan American or Olympic level, in a sport contested in either Pan American or Olympic competitions, shall be granted a leave of absence with pay for the purpose of preparing for and engaging in the competition.

(b) Such paid leave shall be no more than 90 calendar days in one year or the combined days of the official training camp and competition, whichever is less.

4A:6-1.16 Leave for union office

An appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period for such leaves shall be a subject of negotiation between the employer and union.

4A:6-1.17 Leave for elective office: local service

(a) A permanent employee in local service shall be granted a leave of absence without pay to fill elective public office for the term of the office.

1. The employee shall be entitled to return to his or her permanent title within six years from the date the leave begins, provided that a written request to return is submitted to the appointing authority before the leave expires. If the term of the elective office exceeds six years, the employee's name shall be placed on a special reemployment list at the expiration of the six years.

2. The employee shall continue to accrue seniority in his or her permanent title for a maximum of six years.

3. An employee who had taken a promotional examination before being granted the leave may be appointed to the promotional title from the resulting list and shall begin the working test period upon return from the leave.

4. Any appointments to fill the position of the employee during the leave shall be made from appropriate eligible lists, but any such appointments shall be interim and shall terminate upon the return of the employee on such leave to the permanent title.

4A:6-1.18 Leave for emergency civilian duty: State service

(a) State employees in the career, senior executive or unclassified service who are certified disaster service volunteers of the American Red Cross shall be given a leave of absence with pay for up to 10 days in a year and an additional leave of absence without pay for up to 10 days in a year at the request of the American Red Cross and upon approval of the appointing authority to participate in specialized disaster relief services if one of the following conditions are met:

1. The disaster relief services are to be performed in the State;
2. The disaster is a Federal or presidentially declared disaster designated as Level III or above, in accordance with American National Red Cross regulations and procedures; or
3. The disaster is declared by the governor of a state or territory.

(b) State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency, other than the duty described in (a) above, when so ordered by the Governor or by the President of the United States.

1. Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.19 Leave for jury duty: State service

(a) State employees in the career or senior executive service shall be granted leave with pay for the time required to attend jury duty that is scheduled during work hours. Time required for jury duty includes actual time spent in commuting.

(b) Employees who are required to attend jury duty during the work shift immediately preceding or following his or her scheduled work shift wholly within the same day shall be excused from the scheduled work shift. If the employee's scheduled work shift extends from one day to the next and does not immediately precede or follow the period during which an employee must attend jury duty, the employee shall choose and be granted leave from his or her work shift that is scheduled either before or after jury duty.

(c) Employees shall be granted up to their normal number of work hours in any one day to attend jury duty. Employees who do not work on a fixed workweek schedule may be granted up to eight hours' leave in any one work day.

(d) Employees shall submit to their appointing authority written verification of attendance signed by a representative of the court.

(e) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.20 Leave to appear as a witness: State service

(a) State employees in the career or senior executive service shall be granted time off with pay to appear as a witness or a party before a judicial or administrative body or legislative committee when such appearance is part of the job function. If an employee appears as a witness or a party during his or her normal day off, the employee shall be compensated as provided in the rules governing overtime compensation. See N.J.A.C. 4A:3-5.

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party. However, an employee is entitled to time off with pay to attend his or her workers' compensation proceeding.

(c) State unclassified employees may be granted such leave with or without pay at the discretion of the appointing authority.

4A:6-1.21 Family leave

(a) The following two sections include informational provisions on two leave programs: family leave (FLA) under State law (N.J.A.C. 4A:6-1.21A), and family and medical leave (FMLA) under Federal law (N.J.A.C. 4A:6-1.21B). It is the responsibility of every appointing authority to determine the extent to which one or both leave programs are applicable to the situation of an employee requesting leave, or whether neither program is applicable. If one or both programs are applicable, it is also the responsibility of the appointing authority to record the leaves appropriately and implement the applicable law(s).

(b) Following are examples of the interaction of the FMLA and FLA:

EXAMPLE ONE: A State employee needs to take leave for the birth of a child in 1994 and the birth of another child in 1995. If the employee is eligible for leave under both State and Federal laws, the employee may utilize the 12-week entitlement in 1994, which counts against leave under both laws. The State must comply with applicable provisions of both laws. More generous provisions of the FMLA, such as those on intermittent and reduced leave, apply.

In 1995, the employee is not entitled to family leave under State law because State law only permits 12 weeks of family leave in a two-year period. However, the employee is entitled to family leave under Federal law because the FMLA permits a family leave of 12 weeks in a 12-month period.

Leave during 1994 is recorded as both FLA and FMLA. Leave during 1995 is recorded as FMLA only.

EXAMPLE TWO: A municipal employee suffers from a serious health condition which makes the employee unable to perform his job duties. If the employee meets the criteria for eligibility under the FMLA, the employee is therefore entitled to 12 weeks of medical leave. This leave does not count against the employee's entitlement under State law because State law does not provide for leave for an employee's own serious health condition. Therefore, during the same 12-month period, if the employee needs to take leave because of the serious health condition of a child, the employee is entitled to 12 weeks of such leave under State law as long as the employee meets the criteria for eligibility.

EXAMPLE THREE: A State employee is disabled due to her pregnancy and is unable to work. The employee needs to take 12 weeks of leave for this reason. If the employee is eligible for medical leave under the FMLA, then the 12 weeks of pregnancy-disability leave will count toward her FMLA entitlement for that 12-month period. If she thereafter wishes to take 12 weeks of leave to care for her new child and is eligible for family leave under State law, she may then take 12 weeks of family leave. However, if the employee needs additional leave for child care, she may apply for leave without pay for this additional leave. The appointing authority may, but is not required to, grant such additional leave, since the employee has exhausted her leave entitlements under both State and Federal law. See N.J.A.C. 4A:6-1.10.

EXAMPLE FOUR: Joe is employed by the State Department of Insurance. His wife Jill is employed by the Department of State. Joe takes three weeks of leave to care for his seriously ill mother. Jill takes three weeks of leave to care for her newborn child. These three weeks are recorded on both of their records as State family leave (FLA) and Federal family leave (FMLA). They have remaining a combined total of six weeks of FMLA leave if used to care for their newborn child. However, if either is unable to work due to a serious health condition, each has nine weeks of FMLA leave remaining for that purpose. Each has nine weeks of FLA remaining.

EXAMPLE FIVE: An employee gives birth to a child on January 1. On November 1, she commences leave to care for her child, and completes this leave 12 weeks later. Her leave through December 31 is recorded as both FLA and FMLA. After December 31, the leave is recorded only as FLA.

EXAMPLE SIX: An employee takes in a foster child on December 1. He wishes to take a leave to care for the child commencing the following November 1. This leave is recorded as FMLA only, and only lasts through the end of November.

EXAMPLE SEVEN: An employee's wife gives birth on January 1. He commences leave on January 10. This leave is recorded as both FLA and FMLA, for a 12 week total.

EXAMPLE EIGHT: John is covered under a negotiations agreement. He has taken 12 weeks of leave, to end on December 31, 1993 because of his own serious health condition. Then he has a relapse and, on February 10, 1994, requires further leave. The leave does not fall under the FLA at all. Prior to February 5, 1994, the leave is also not recorded as FMLA. The leave commencing on February 10, 1994 is medical leave and is recorded as FMLA.

EXAMPLE NINE: Susan is a nonrepresented managerial employee who commences leave on July 1, 1993 for care of a newborn and needs leave for the next 15 weeks. From July 1 through August 4, the leave is recorded as FLA only. From August 5 through September 22 (12 weeks after July 1) the leave is recorded as FLA and FMLA. From September 23 through October 13, this leave is recorded as FMLA only.

EXAMPLE TEN: Robert is taking six weeks of paid sick leave for major surgery and recuperation from the surgery. Robert has informed his employer about the reason for his leave. His employer has designated this paid sick leave as FMLA leave. Immediately upon doing so, the employer also notifies Robert of this designation.

4A:6-1.21A State family leave

(a) This section describes leaves for which employees in State and local service may be eligible, pursuant to the Family Leave Act, L.1989, c.261. The Division on Civil Rights, Department of Law and Public Safety, has promulgated rules to implement and enforce the Family Leave Act. See N.J.A.C. 13:14.

(b) The following definitions are used in this section:

1. "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a parent who is under 18 years of age or 18 years of age or older but incapable of self-care because of a mental or physical impairment.

2. "Employ" means to suffer or permit to work for compensation and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

3. "Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under the Family Leave Act, P.L.1989 c.261, for not less than 1,000 base hours during the immediately preceding 12-month period, and includes employees in the career, senior executive and unclassified services.

4. "Employer" means a legal entity which engages the services of an employee and which from May 4, 1990 to May 3, 1991, employed 100 or more persons; from May 4, 1991 to May 3, 1993, employed 75 or more persons; and from May 4, 1993 and thereafter employed 50 or more persons.

i. In State service, "employer" refers to the State of New Jersey. In local service, "employer" refers to the political subdivision or autonomous public officer, board or body.

5. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

6. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

- i. The birth of a child of the employee;
- ii. The placement for adoption of a child with the employee; or
- iii. The serious health condition of a family member of the employee.

7. "Family member" means a child, parent, or spouse.

8. "Intermittent leave" means a non-consecutive leave comprised of intervals, each of which is at least one but less than 12 workweeks within a consecutive 12-month period.

9. "Parent" means a person who is the biological parent, adoptive parent, foster parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, guardianship, or visitation with a child.

10. "Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, but not more than one workweek at a time.

11. "Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

12. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- i. Inpatient care in a hospital, hospice, or residential medical care facility; or
- ii. Continuing medical treatment or continuing supervision by a health care provider.

(c) An employee shall be entitled to a family leave of 12 weeks in any 24-month period, unless denied under (d) below.

1. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

2. An employee shall be entitled, at the option of the employee, to take family leave on a reduced leave schedule, in the case of a family member with a serious health condition.

i. The employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks.

ii. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employee and the appointing authority, if the leave is taken upon the birth or adoption of a healthy child.

iii. The employee shall make a reasonable effort to schedule reduced leave so as not to disrupt unduly the operations of the appointing authority and the employee shall provide the appointing authority with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member in a manner which is reasonable and practicable.

iv. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of family leave to which an employee is entitled.

EXAMPLE: An employee on a five day workweek schedule is entitled to a total of 12 weeks of family leave, or 60 working days. The employee takes reduced leave of two days per week for a total of 20 days. The employee remains entitled to 40 working days of family leave.

3. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

i. The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

ii. The employee provides the appointing authority with prior notice of the leave in a manner which is reasonable and practicable; and

iii. The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the appointing authority.

iv. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employee and the appointing authority.

4. See N.J.A.C. 13:14-1.10 concerning proof of need for family leave.

(d) Family leave may be denied to an employee if:

1. The employee is among the highest paid five percent of the employer's employees or the seven highest paid employees of the employer, whichever is greater;

2. The denial is necessary to prevent substantial and grievous economic injury to the employer's operations; and

3. The appointing authority notifies the employee of its intent to deny the leave at the time the appointing authority determines that the denial is necessary.

i. When leave has already commenced at the time of the notification pursuant to (d)3 above, the employee shall return to work within 10 working days of the date of notification.

(e) No employee shall, during any period of family leave, perform services on a full-time basis for any employer for whom the employee did not provide those services immediately prior to commencement of the leave.

(f) During a family leave, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee returns to work or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner.

(g) Except for health insurance as provided in (f) above, other employment benefits shall be available to employees on family leave without pay as are available to employees on all other leaves without pay.

(h) If a layoff occurs during a family leave, the employee shall retain all rights available under N.J.A.C. 4A:8 as if the employee had not taken the leave.

(i) Family leave without pay shall not be deducted from seniority for layoff purposes. See (c) above. For all other purposes, family leave without pay shall be treated the same as other leaves without pay.

(j) An employee may, at his or her option, use paid leave for family leave purposes. An employee who chooses to use paid leave (vacation, sick or administrative) must meet the requirements set forth in this subchapter for the type of leave requested.

4A:6-1.21B Federal family and medical leave

(a) The Federal Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., was effective on August 5, 1993, except for employees covered under a collective negotiations agreement, for whom the Act is effective on February 5, 1994, or the date the agreement expires, whichever is sooner. This section is for informational purposes only, and addresses areas in which FMLA provisions differ from those under the State Family Leave Act (FLA). See N.J.A.C. 4A:6-1.21A. The U.S. Department of Labor has promulgated rules to implement and enforce the FMLA. See 29 CFR 825.

(b) Definitions, unique to this section, are as follows:

1. "Eligible employee" means an employee of the State or a political subdivision who has worked for the employer for at least 12 months for a minimum of 1,250 hours. In determining whether an employee meets this hours of service requirement, work not requested by an employer but suffered or permitted is work time for purposes of meeting this requirement. See 29 U.S.C. 207; 29 CFR 785.11.

2. "Family leave" means a type of FMLA leave to which an eligible employee is entitled if the employee meets the conditions set forth in (d)1 or (d)2 below.

3. "Medical leave" means a type of FMLA leave to which an employee is entitled if the employee meets the conditions set forth in (d)3 below.

4. "Parent" means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

5. "Serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:

i. Any period of incapacity or treatment in connection with or resulting from inpatient care in a hospital, hospice, or residential medical care facility;

ii. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by a health care provider; or

iii. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(c) Public agencies, including the State of New Jersey and political subdivisions, are covered employers without regard to the number of employees employed.

(d) An eligible employee of a covered employer is entitled to 12 weeks of FMLA leave in a 12-month period:

1. Because of the birth of a child or the placement of a child for adoption or foster care, except that the entitlement expires at the end of the 12-month period beginning on the date of birth or placement;

2. Because the employee is needed to care for a child, spouse or parent with a serious health condition; or

3. Because the employee's own serious health condition makes the employee unable to do his or her job.

(e) In State service, the 12-month period begins on the first day of FMLA leave.

(f) Leave may be taken intermittently or on a reduced leave schedule when medically necessary in the case of an employee who has a serious health condition or in the case of a child, spouse or parent who has a serious health condition.

1. Intermittent leave may last for as little as one hour or for as long as several weeks. A reduced leave schedule reduces the employee's hours per workweek or workday. No limit may be placed on the size of an increment of such leave, except that an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for use of leave.

2. An employee may take leave in this manner for the birth or placement of a child for adoption or foster care only if the employer agrees.

(g) Special conditions related to FMLA leave are as follows:

1. A husband and wife who both work for the same employer are permitted to take a combined total of 12 weeks of FMLA leave in a 12-month period for the birth or placement for adoption or foster care of a child or to care for a parent with a serious health condition. However, following the use of a portion of the 12-week leave entitlement for one of these purposes, the husband and wife will each be entitled to the difference between the leave taken individually by them and their 12-week entitlement if the additional leave is for a different FMLA purpose (such as their own serious health condition).

2. Employers shall keep FMLA records for no less than three years and shall make them available for inspection, copying and transcription by representatives of the U.S. Department of Labor upon request. These records shall include all of the following:

- i. Basic payroll and identifying employee data;
- ii. Dates FMLA leave is taken by employees. FMLA leave shall be designated as such in the employer's records and shall not be placed in the same category as other leaves. A general designation, such as "sick leave," does not fulfill this requirement;
- iii. The hours of the FMLA leave, if the leave is taken in increments of less than one full day;
- iv. Copies of employee notices of leave which fall under the FMLA;
- v. Copies of all general and specific notices given to employees as required under the FMLA and 29 CFR 825.300 et seq.;
- vi. Any written or electronic documents describing employee benefits or employer leave policies outside of leave provisions found in N.J.A.C. 4A:6 et seq.;
- vii. Premium payments of employee benefits; and
- viii. Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

3. If the employer has a uniformly applied policy governing outside employment, such a policy may continue to apply to an employee while on FMLA leave. Otherwise, an employer may not deny benefits to an employee who is entitled to leave because the employee has outside employment.

4. The enforcing agency for FMLA leave is the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. Any complaints related to this leave shall be made to that agency. Standardized forms are available from that agency for use by employers.

(h) If an employee qualifies under both Federal and State law, the leave used counts against the leave's entitlement under both laws, provided that nothing in the FMLA supersedes any provision of State law that provides greater rights than those provided under the FMLA, and further provided that rights under the FMLA shall not be diminished by State law.

(i) An employer may designate an employee's paid leave as FMLA leave if the employee provides information to the employer indicating an entitlement to such leave. The employer shall notify the employee that the paid leave has been designated as FMLA leave within two work days of the time the employee gives notice of the need for leave, and before the employee commences the leave, unless the employer does not have sufficient information within that time to make a determination.

1. If the employer does not have sufficient information regarding the employee's reason for taking the paid leave, the employer shall notify the employee of the FMLA designation, if any, as soon as such information is obtained.

2. If the employer has sufficient information to make such a designation but does not do so within the timeframes indicated above, the employer shall designate the paid leave as FMLA leave prospectively as of the date of notification to the employee.

(j) In State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. For all other purposes, FMLA leave without pay shall be treated the same as other leaves without pay.

4A:6-1.22 Donated leave program

(a) A State employee shall be eligible to receive donated sick or vacation leave if the employee:

1. Has completed at least one year of continuous State service;
2. Has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off;
3. Has not, in the two-year period immediately preceding the employee's need for donated leave, been disciplined for chronic or excessive absenteeism, chronic or excessive lateness or abuse of leave; and
4. Either:
 - i. Suffers from a catastrophic health condition or injury;

ii. Is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury; or

iii. Requires absence from work due to the donation of an organ (which shall include, for example, the donation of bone marrow).

(b) For purposes of this section, a "catastrophic health condition or injury" shall be defined as follows:

1. With respect to an employee, a "catastrophic health condition or injury" is a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health or the health of the employee's fetus and requiring the care of a physician who provides a medical verification of the need for the employee's absence from work for 60 or more work days.

2. With respect to an employee's immediate family member, a "catastrophic health condition or injury" is a life-threatening condition or combination of conditions or a period of disability required by his or her mental or physical health and requiring the care of a physician who provides a medical verification of the need for the family member's care by the employee for 60 or more work days.

(c) A State employee may request that the appointing authority approve his or her participation in the program, as a leave recipient or leave donor. The employee's supervisor may make such a request on behalf of the employee for his or her participation in the program as a leave recipient.

1. The employee or supervisor requesting the employee's acceptance as a leave recipient shall submit to the appointing authority medical verification from a physician or other licensed health care provider concerning the nature and anticipated duration of the disability resulting from either the catastrophic health condition or injury, or the donation of an organ, as the case may be.

2. When the appointing authority has approved an employee as a leave recipient, the appointing authority shall, with the employee's consent, post or circulate the employee's name along with those of other eligible employees in a conspicuous manner to encourage the donation of leave time, and shall provide notice to all negotiations representatives in that appointing authority.

i. If the employee is unable to consent to this posting or circulation, the employee's family may consent on his or her behalf.

(d) In State service, a leave recipient must receive at least five sick days or vacation days or a combination thereof from one or more leave donors to participate in

the donated leave program. A leave donor shall donate only whole sick days or whole vacation days and may not donate more than 10 such days to any one recipient.

1. A leave recipient shall receive no more than 180 sick days or vacation days, and shall not receive any such days on a retroactive basis.

2. A leave donor shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave.

3. A leave donor shall not revoke the leave donation.

4. If a leave donor is not in the same department or autonomous agency as the leave recipient, appropriate arrangements shall be made between the affected appointing authorities to verify donor eligibility and adjust leave records. However, the posting requirement set forth in (c)2 above is limited to the recipient's appointing authority.

(e) While using donated leave time in State service, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain such leave upon his or her return to work.

1. Any unused, donated leave shall be returned to the leave donors on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less than one day per donor to be returned, that leave time shall not be returned.

2. Upon retirement, the leave recipient shall not be granted supplemental compensation on retirement for any unused sick days which he or she had received through the leave donation program.

(f) A State employee shall be prohibited from threatening or coercing or attempting to threaten or coerce another employee for the purpose of interfering with rights involving donating, receiving or using donated leave time. Such prohibited acts shall include, but not be limited to, promising to confer or conferring a benefit such as an appointment or promotion or making a threat to engage in, or engaging in, an act of retaliation against an employee.

(g) In local service, an appointing authority may establish a donated leave program which shall be consistent with the provisions of (a) through (f) above, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner a donated leave program proposal no later than 30 days before the planned implementation of the program. The proposal shall include a summary of consultations with affected negotiations representatives concerning the program and name the donated leave program administrator for the appointing authority.

2. The appointing authority shall not implement a donated leave program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved donated leave program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the donated leave program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough program which may differ in detail but which shall be consistent with the purpose of these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

- i. Shorter work days;
- ii. Intermittent days off; or
- iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

- i. As sick leave;
- ii. As a leave without pay due to disability; or
- iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough or furlough extension leave for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough or furlough extension leave shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive.

1. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. The employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension's days in accordance with the regulations of the State Health Benefits Commission.

2. Furlough extension leave may be used for education or family care needs only.

3. Requests for furlough extension leave are subject to the approval of the appointing authority and the Department of Personnel.

(e) An employee on a voluntary furlough or furlough extension leave shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(f) In State service, the anniversary date of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6.

(g) The seniority of an employee on a voluntary furlough or furlough extension leave shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(h) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to the voluntary furlough or furlough extension leave. See N.J.A.C. 4A:4-5.

(i) In State service, an employee on a voluntary furlough or furlough extension leave on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(j) See N.J.A.C. 17:9-4.2, 8.3 and 9.1 for State health benefits coverage during a voluntary furlough.

(k) Once an employee has used the equivalent of 30 days for a voluntary furlough and the equivalent of 60 days for a furlough extension leave in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough and furlough extension leave, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave), 1.3 (sick leave), 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); and 4A:4-2.15 (seniority in rating of examinations) and 4A:8-2.4 (seniority in layoffs).

4A:6-1.24 School volunteer leave

(a) State employees in the career, senior executive or unclassified service shall be granted leave with pay, up to a maximum of 20 hours per calendar year, to volunteer in an academically beneficial school activity.

1. In local service, an appointing authority may establish a school volunteer leave program.

(b) An academically beneficial school activity, for purposes of this section, includes, but is not limited to, helping a teacher in the classroom, as well as the following activities held at the schools: reading to children; tutoring; assisting students with homework; mentoring; serving as a guest speaker; advising students on careers; or assisting with extra curricular or coaching activities.

1. School volunteer leave is not intended to be used for such activities as parent teacher conferences back-to-school nights, field trips or attending class performances.

2. Activities may take place at any New Jersey public, private or parochial school, through grade 12.

3. The volunteer program shall be approved by the local board of education or, in the case of a private or parochial school, the appropriate administrative authority for that school.

4. The State employee need not be a parent of a child in the school in which the volunteer activity is being performed. However, employee participation in the volunteer program shall be subject to approval by the school principal or designee.

(c) State appointing authorities shall establish procedures for school volunteer leave, subject to the following:

1. Leave shall be requested in advance, and shall be granted consistent with the operational needs of the appointing authority.

2. Employee participation shall be verified in writing by the school principal or designee.

3. Paid leave under this section shall not be granted for time spent travelling to and from the school. Vacation leave, administrative leave, and leave without pay may be used in conjunction with school volunteer leave for travelling time.